

**Remarks**

At the time of the Office Action dated January 10, 2005, claims 1-10 were pending. Applicants acknowledge, with appreciation, the Examiner's indication that claims 2, 5 and 8 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 1, 3, 4, 6, 7, 9 and 10 stand rejected. It is noted that claim 4 should have been indicated to be allowable because it is dependent on allowable claim 2.

In this Amendment, claims 1 and 10 have been amended. Care has been exercised to avoid the introduction of new matter. Specifically, claim 1 has been amended to include the additional limitations. Adequate descriptive support for the amendment can be found in, for example, Fig. 14 and relevant description of the specification. Claim 10 has been amended to correct typographic oversights. The specification has also been amended to correct typographic oversights.

**Claims 1, 3, 4, 6, 7, 9 and 10 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Ohbayashi.**

In the statement of the rejection, the Examiner admitted that Ohbayashi does not disclose that a length of the memory cells in the extending direction of the word line is longer than that in an extending direction of the bit lines. Despite such an admission, the Examiner concluded, "[i]t would have been obvious... to form a length of the memory cells in the extending direction of the word line is longer than that in an extending direction of the bit lines." The Examiner further asserted, "the intended use limitation (a length of the memory cells in the extending direction of the word line is longer than that in an extending direction of the bit lines) does not structurally distinguish the claimed invention over reference 6,479,860."

In response, it is submitted that the Examiner did not show any evidence that the above limitation is obvious. With respect to the Examiner's assertion regarding "the intended use limitation," Applicants note that the Examiner did not provide any reason why the limitation "a length of said memory cells in the extending direction of said word line is longer than that in an extending direction of said bit lines" is considered to be "an intended use limitation." Applicants emphasize that there is no *per se* rule of unpatentability under 35 U.S.C. §103 that precludes patentable significance to intended use and that the Examiner must provide evidence showing that the reference teaches the limitation. The Examiner has not discharged his burden. Moreover, the claimed recitation at issue identifies particular dimensional relationships of the memory cell configuration. This limitation defines a structural characteristic of the invention, which cannot be ignored.

It is well established precedent that to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Applicants submit that Ohbayashi does not teach or suggest a semiconductor memory device including all the limitations recited in claim 1, as amended. Specifically, the reference does not teach a semiconductor memory device in which "said bit lines are disposed above said access MOS transistors and said driver MOS transistors, said load elements are disposed above said bit lines, and said capacitive elements are disposed above said load elements," recited in claim 1.

In Ohbayashi, load elements Q3, Q4 are formed on a semiconductor substrate and are not formed above access MOS transistors Q5, Q6 and driver MOS transistors Q1, Q2. In addition, bit lines 11b, 11d are formed above load elements Q3, Q4 and capacitive elements 13a, 13b. It is

therefore apparent that the above limitations added to claim 1 in this Amendment are not taught or suggested by Ohbayashi.

It is further submitted that Ohbayashi does not teach the limitation “a word line... extending in the same direction as an extending direction of gate electrodes of said driver MOS transistors and disposed between said gate electrodes of said driver MOS transistors,” recited in claim 1. Although Fig. 3 of Ohbayashi shows a word line, the reference provides no description regarding the arrangement of the word line in the memory device. Even the Examiner did not point out where the reference discloses the arrangement of the word line.

Based upon the foregoing, Ohbayashi does not teach or suggest a semiconductor device including all the limitations recited in claim 1 within the meaning of 35 U.S.C. §103. *In re Royka*, 490 F.2d 981. Accordingly, claim 1 would not have been obvious over Ohbayashi. In addition, dependent claims 3, 4, 6, 7, 9 and 10 are also patentable at least because they recite all the limitations recited in claim 1. Applicants, therefore, respectfully solicit withdrawal of the rejection of the claims and favorable consideration thereof.

**Conclusion.**

It should, therefore, be apparent that the imposed rejections have been overcome and that all pending claims are in condition for immediate allowance. Favorable consideration is, therefore, respectfully solicited.

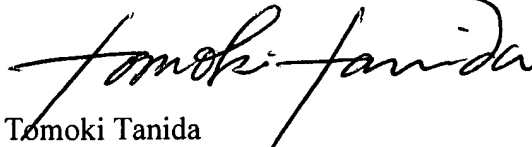
To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper,

**Application No.: 10/626,594**

including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP

A handwritten signature in black ink, appearing to read "Tomoki Tanida", written over the printed name.

Tomoki Tanida

Recognition under 37 C.F.R. 10.9(b)

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